

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

DONALD CARTER

PLAINTIFF

v.

CIVIL ACTION NO. 2:21-CV-84-KS-MTP

CASEY H. BRISTER, *et al.*

DEFENDANTS

ORDER

Plaintiff is an inmate in the custody of MDOC. He asserted claims against certain employees of MDOC arising from an automobile accident that occurred while he was being transported to SMCJ from a local hospital. He alleged that Defendant Casey Brister was driving the prisoner transport vehicle, and that he negligently caused the accident.

On September 21, 2021, pursuant to screening under 28 U.S.C. § 1915(e)(2), the Magistrate Judge entered a Report and Recommendation [23] that the Court dismiss Plaintiff's claims against Brister without prejudice. The Magistrate Judge found that, at best, Plaintiff had stated a claim against Brister for negligence, which is not actionable under § 1983. Additionally, he found that Plaintiff had not stated a cognizable claim under the Mississippi Tort Claims Act.

On October 12, 2021, Plaintiff filed his Objections [25] to the Report and Recommendation. Plaintiff again asserted that Defendant Brister "negligently caused the accident in question," and it is clear that his claims against Brister arise from alleged negligence, rather than deliberate indifference.

When a party lodges an objection to a Magistrate Judge's report and

recommendation, the Court is required to “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1). The Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” *Id.*

Having conducted a full, *de novo* review of Plaintiff’s claims, the Magistrate Judge’s Report and Recommendation [23], and Plaintiff’s objection, the Court finds that the Magistrate Judge is correct. Plaintiff has not stated a claim for relief against Defendant Brister. The Court **overrules** Plaintiff’s Objection [25] and **approves and adopts** the Magistrate Judge’s Report and Recommendation [23] in full. Plaintiff’s claims against Defendant Brister are **dismissed without prejudice**.

Plaintiff also filed a Motion for Appointment of Counsel [26]. “Pursuant to 28 U.S.C. § 1915(e)(1), the court may appoint an attorney to represent a litigant in federal court, but there is no automatic right to appointment of counsel in a civil rights case” *Castro Romero v. Becken*, 256 F.3d 349, 353-54 (5th Cir. 2001). “In evaluating whether the appointment of counsel is proper, the district court considers the type and complexity of the case, the litigant’s ability to investigate and present the case, and the level of skill required to present the evidence.” *Id.* This is not a complex case; Plaintiff’s claims are relatively simple, and he is able to investigate and present them adequately. Therefore, the Court **denies** his Motion for Appointment of Counsel [26].

SO ORDERED AND ADJUDGED this 26th day of October, 2021.

/s/ Keith Starrett
KEITH STARRETT
UNITED STATES DISTRICT JUDGE